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**POLICY IMPLICATIONS FOR NGOS AND CONTRACTORS IN PERMISSIVE AND  
NON-PERMISSIVE ENVIRONMENTS**

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## **ABSTRACT**

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According to United States (U.S.) security strategy, policy, and military doctrine, nongovernmental organizations (NGOs) and commercial contractors are vital partners in accomplishing national security and military objectives. Contractors partner with the military and other U.S. agencies to provide security, logistics, nation-building, and administrative duties during peacekeeping and combat operations. NGOs are vital for the U.S. and United Nations (U.N.) when conducting relief and reconstruction operations. Recent operations provide case studies on the performance of NGOs and contractors in different environments. This paper describes the effectiveness of NGOs and contractors in permissive and non-permissive environments. Additionally, it examines the degree in which the military Services depend on contractors to ameliorate force structure and force cap limits. Finally, this paper draws conclusions with respect to U.S. policy, premature use of contractors to meet force structure constraints, and implications on mission success. Recommendations are provided for future policy and strategy endeavors.



## POLICY IMPLICATIONS FOR NGOS AND CONTRACTORS IN PERMISSIVE AND NON-PERMISSIVE ENVIRONMENTS

Two groups of civilian organizations—nongovernmental organizations (NGOs) and commercial contractors-- have become so inextricably linked with national and international security policy implementation that their participation is permanently codified in strategy documents and Joint and Service doctrine. NGO influence in the global arena is undeniable. The number of international NGOs granted agenda-setting consultative status with the United Nations (U.N.) has increased exponentially since 1945—from 0 to 2719.<sup>1</sup> There are more than 25,000 NGOs listed in the *Yearbook of International Organizations*, and their influence is increasing with their numbers.<sup>2</sup> The U.N. and nation states are depending increasingly on NGOs to relieve pain and suffering in operations worldwide. In 1992, NGOs accounted for 13% of all development assistance;<sup>3</sup> their worldwide contributions total between 9 and 10 billion dollars each year—more than any single nation or international body, including the U.N.<sup>4</sup> They have influence as political actors—leveraging their consultative status with the U.N. and their large budgets—and they play a substantial role in nation building and humanitarian relief. Likewise, commercial contractor prominence in security policy, support of major operations, and nation building has grown substantially. The growing use of contractors and NGOs when implementing the instruments of national power seems inevitable, irreversible, and essential in a global environment with resource constraints. Contractors and NGOs multiply and extend essential government manpower, skills, funds, and capabilities when their efforts can be aligned to accomplish national objectives. However, there are several sources of friction that can quickly turn these civilian capability-multipliers into a liability.

Although NGOs and contractors are vital components of the nation's security policy, they do not always perform well in non-permissive environments because they require a reasonable level of security to do their missions. National and military security policy should account for their degraded performance in non-permissive security situations. This paper examines U.S. reliance on contractors and NGOs as implementing partners of national and defense objectives by looking at strategy, Joint doctrine, and Service doctrine. Additionally, it assesses how NGOs and contractors have fared in mission accomplishment under various conditions, and it describes some of the issues in working with civilians on the "battlefield." Finally, it provides policy recommendations that mitigate any shortfalls.

### NGOs Role According to U.S. Strategy, Policy, and Doctrine

NGOs, NGOs as contractors, and commercial contractors all constitute non-state civilian actors who the United States must deal with as partners to promote its interests and accomplish its objectives as outlined in the National Security Strategy (NSS), National Defense Strategy (NDS), National Military Strategy (NMS), Joint doctrine, and Service doctrine. The NSS of 2002 explicitly mentioned that the United States will work with “non-governmental organizations [and international organizations and other countries]. . .to provide the humanitarian, political, economic, and security assistance necessary to rebuild Afghanistan. . .”<sup>5</sup> The NSS also identified the Department of State as the agency in the lead for nation building tasks, instructing, “its people and institutions must be able to interact equally adroitly with non-governmental organizations and international institutions.”<sup>6</sup> One of the State Department’s institutions is the U.S. Agency for International Development (USAID) with the mission of promoting peace and stability by fostering economic growth, protecting human health, providing emergency humanitarian assistance, and enhancing democracy in developing countries.<sup>7</sup> The NSS acknowledges NGOs and the necessity of having to work with them.

The NDS acknowledges that U.S. strategic objectives are not attainable without the support and assistance of partners. In context, “partners” reasonably include NGOs. It further identifies the State Department as the NGO coordinator by stating:

The U.S. Government created the Office of the Coordinator for Reconstruction and Stabilization at the State Department to bolster the capabilities of U.S. civilian agencies and improve coordination with international partners to contribute to the resolution of complex crises overseas.<sup>8</sup>

The NDS seeks to clarify the lead agency for “non-military stabilization and reconstruction tasks that might otherwise often become military responsibilities by default.”<sup>9</sup> The NDS acknowledges the need to work with international organizations but clearly identifies the Department of State as the lead agency in coordinating with civilians involved in “non-military tasks.”

The NMS addresses NGOs and contractors and instructs commanders to ensure military activities are integrated with the other instruments of national and international power to include “the commercial sector” and “non-governmental organizations.”<sup>10</sup>

Although the strategy documents do not comprehensively describe the use of NGOs, Department of Defense doctrine has been maturing significantly in the past 10 years and reveals NGOs as major stakeholders in implementing national security strategy. The Army, in its role as the land component commander for a Joint force commander, is tagged in Field Manual 3-93-- *The Army in Theater Operations*--with “planning and maintaining linkages to Joint, multinational, interagency, NGOs, and international organizations in support of the combatant

commander.”<sup>11</sup> The manual mentions NGOs 86 times. This 2005 Army doctrinal manual further instructs its users to share collected intelligence and information with selected NGOs;<sup>12</sup> to be prepared to provide logistical (fuel, transportation) support;<sup>13</sup> and to rely heavily on NGOs to provide support to displaced civilians and other civil-military operations.<sup>14</sup> The doctrine is written to emphasize the importance of synchronizing the efforts of U.S. governmental agencies, host-nation agencies, and NGOs for maximum effectiveness at the operational level—in the theater of operations.<sup>15</sup> Hence, recent Army doctrine addresses the terms of the strategy documents by writing about the integration of NGOs in the Joint area of operations.

Army field manual FM 3-07, *Stability and Support Operations*, published in February 2003 reiterates the doctrine on NGOs found in other Army doctrine: “In the final analysis, the commander’s assessment of conditions and resources must include the activities and capabilities of NGOs and then integrate them into the selected course of action.”<sup>16</sup> This manual emphasized that the conditions that necessitate military stability and support operations—human suffering, population movements, famine, human rights violations, and civil war—are the same conditions that attract NGOs. The U.S. Military, the U.S. Government and the U.N. often turn to NGOs to carry out relief functions, and commanders, according to doctrine, are expected to learn to navigate these ad-hoc relationships.<sup>17</sup>

The capstone publication and foundation for Joint doctrine is *Unified Action Armed Forces (UNAAF)*, Joint Publication 0-2, which states in several locations and in many ways that unity of effort “requires coordination among government departments . . . with nongovernmental organizations (NGOs), international organizations (IOs), and among nations in any alliance or coalition.”<sup>18</sup> Most all other Joint doctrine publications echo this sentiment. For instance, Joint Publication 3-08, *Interagency Coordination During Joint Operations*, suggests that military operations must be synchronized with those of other agencies of the U.S. government, foreign forces, nongovernmental organizations, and international organizations<sup>19</sup> because this coordination forges the link between the military instrument of power and other instruments of national power. Joint Pub 3-57, *Joint Doctrine for Civil-Military Operations*, published in February 2001, identified the civil affairs soldiers as the military organization charged with coordinating and integrating NGOs to best achieve military objectives. They conduct most of this integration with NGOs, the United Nations agencies, and Department of State agencies such as USAID out of the Civil-Military Operations Center (CMOC).

The myriad of military operations in the last decade have stimulated much new Service and Joint doctrine reiterating the importance of including NGOs in planning to achieve strategic and operational objectives. From all indications, this trend toward partnering with NGOs will

continue. The latest version of the Quadrennial Defense Review (QDR) Report, dated 6 February 2006, an important DOD strategy and resource driver, placed new emphasis on partnerships with interagency organizations, international organizations, and nongovernmental organizations. The report reminds its readers that DOD issued guidance in 2005 placing stability operations on par with combat operations. The DOD directive “calls for improving the Department’s [DOD’s] ability to work with interagency partners, international organizations, nongovernmental organizations and others to increase capacity to participate in complex operations abroad.”<sup>20</sup>

#### U.S. Strategy, Policy and Doctrine with Respect to Contractors

There are a plethora of references on the use of contractors to perform jobs for the Departments of Defense and State. For instance, the Joint Chiefs of Staff Focused Logistics Campaign Plan, a strategy document for defense transformation, lists agile sustainment as a required and approved capability. Essential agile sustainment capabilities include “integrated and synchronized contractor logistics support, host nation support, and executive agents.”<sup>21</sup> The campaign plan further admits contractor support “transfers the responsibility for managing logistics from the government to a contractor, reducing the need for government personnel and facilities.”<sup>22</sup> The reasons contractors are playing an ever-increasing role supporting deployed forces include downsizing of the military during the past decade, reliance on contractors to support high-tech weaponry, reliance on contractors to provide initial or complete life cycle support of equipment, and outsourcing to improve efficiency and save money.<sup>23</sup> The Department of Defense (DOD) relies heavily on contractor capabilities to accomplish its transformation objectives.

DOD is a leading proponent for increasing the use of contractors to improve efficiency and to increase the fighter strength of the military. The DOD’s 2001 Quadrennial Defense Review, discussed best business practices, vowed to measurably increase the tooth-to-tail ratio over the next five years; tooth-to-tail is measured as headquarters personnel versus war fighting forces. The primary method for increasing the ratio will be to reduce the tail—to outsource non-core functions, to include such items as “food and other services in forward deployed areas.”<sup>24</sup> The 2006 Quadrennial Defense Review Report did not mention reducing the tail but did emphasize that contractors are part of the Total Force—active and reserve military personnel, civil servants, and contractors.<sup>25</sup> With regard to contractors, the report highlighted the new DOD Instruction on *Contractor Personnel Authorized to Accompany U.S. Armed Forces* as a key document to further integrate contractors into the Total Force.<sup>26</sup> The DOD Instruction referred to



in the 2006 QDR was published on 3 October 2005 and serves as a comprehensive source of DOD policy for defense contractors, their employees, and their subcontractors to include contractors deploying with the force. This DOD instruction is an attempt to correct many of the issues encountered in recent contingency operations as the military utilizes contractors in ever-increasing roles. Both the 2001 and 2006 QDRs underscore contractors as vital contributors of the Total Force and U.S. warfighting capability and capacity. According to a June 2003 Government Accounting Office (GAO) report on contractor support to military operations, DOD relies on contractors extensively.<sup>27</sup> The DOD uses contractors in deployed overseas areas to overcome force limitations, to backfill needed skills, and to conserve crucial skills for future deployments.<sup>28</sup>

DOD has used contractors extensively in current operations and, according to the QDR and the Focused Logistics Campaign Plan, plans to increase their use in the future. Accordingly, the military is faced with a situation where it is increasingly engaged, going into fluid and complex environments, while relying all the more on contractors than ever before. This situation underscores the need for policy and guidance to standardize commanders' responsibilities and address potential legal and performance issues in hiring contractors to do military work.

In the June 2003 GAO audit of contractors supporting deployed forces, the GAO found, among other things, that "only the Army had developed substantial guidance and policies to deal with contractor support to deployed forces."<sup>29</sup> DOD, on the other hand, was chastised for not publishing any baseline policy to guide the services and combatant commanders on how to deal with contractors. Notwithstanding GAO's admonishment, the Joint Staff published Joint Publication 4-0, Doctrine for Logistics Support of Joint Operations, which contained a chapter on the employment of contractors and the commander's responsibilities. GAO still felt there were too many places a commander has to look to determine all responsibilities with regard to the use of deployed contractors and the government's obligations.<sup>30</sup> Thus, in October 2005, DOD published Department of Defense Instruction 3020.41, *Contractor Personnel Authorized to Accompany the U.S. Armed Forces*, as a comprehensive policy to address contractor on the battlefield issues. The policy is comprehensive with regard to addressing current contractor issues but limited in scope to only DOD components. The policy does not address the conduct and control of contractors hired by other U.S. agencies such as security contractors for the Department of State.

Strategy, policy, and doctrine for contractors on the battlefield all acknowledge the increasing use of contractors by U.S. forces to support high-tech systems and to augment a

decreasing military structure being asked to do more. Doctrine and policy writers are hurrying to address the issues encountered when employing contractors in dangerous environments where legal, accountability, security, performance, and liability issues persist. DOD has recently published comprehensive policy to instruct its components on the rules of dealing with contractors accompanying the force. The new policy governs only the Department of Defense but not the other agencies who find themselves in the theater of operations. Recent contingency operations covering the full spectrum of military action provide insight on the performance of NGOs and contractors in permissive and non-permissive situations.

#### NGO Performance and Issues

As mentioned previously, NGOs are stakeholders and vital players in implementing national strategy, especially when involved in nation building and providing humanitarian aid. As the environment becomes less permissive, NGOs become less effective. Strategists and practitioners must understand, mitigate, and compensate for NGO ineffectiveness. The following descriptions illustrate lessons from recent experiences about the performance of NGOs in different environments.

#### The NGO Dilemma: Maintaining Neutrality Versus Security and a Coordinated Effort

Although NGOs try to avoid association with the military to maintain their neutrality, militaries are often involved in protecting humanitarian relief supplies out of necessity. In lawless environments, warlords and armed militants steal relief supplies or restrict freedom of movement. In Somalia and Sudan, NGOs found that over 80% of food supplies were lost due to theft or raids.<sup>31</sup> In Angola, Burundi, Chechnya, Rwanda, Sierra Leone, Sudan, Iraq, and other countries, relief workers have been targeted and killed in the process of providing humanitarian relief.<sup>32</sup> Military to NGO coordination is essential to provide effective and synchronized efforts in relieving pain and suffering, especially in the early days of the crisis, yet coordination is seldom accomplished. NGOs rely on their neutrality and weakness for their protection. They want the host nation population and the armed parties to see them as harmless, and possibly even useful.<sup>33</sup> Association with a national military threatens the NGO's impartial image and puts them in danger.<sup>34</sup> In Somalia, their fears were realized when World Vision personnel were attacked by militia forces expressing their displeasure with the U.S.-led attempt to capture Mohammad Farah Aideed.<sup>35</sup> Yet, despite their desire for impartiality and neutrality, NGOs are warming up to better relations with militaries and governments involved in crisis situations. They are abandoning their neutral stance because the armed antagonists, in some cases, are abandoning their indifference toward NGOs in their space. "Many NGOs report a lessening of

respect for neutral parties present in a conflict, a breakdown of spoken and unspoken rules safeguarding helpers.<sup>36</sup> Not only is security important, NGOs also cooperate with militaries and government entities because they need funds. USAID and the the Office of the United Nations High Commissioner for Refugees (UNHCR) primarily hire NGOs to conduct their humanitarian and reconstruction tasks. Again, NGOs face a dilemma between neutrality and taking sides out of necessity. It is hard for them to appear neutral to all parties when they are being paid by one of the opposing sides. Other reasons NGOs want to keep closer ties with the military include sharing of information and emergency evacuation. As a result of the NGO neutrality versus necessity quandary, the military-NGO relationship is a delicate one and requires balance. Coordination, information sharing, and security arrangements must be discrete and restrained; otherwise, the NGO is no longer a perceived neutral party, and the veil of security is lost.

#### Lessons from The Balkans and Somalia

Congress and thus GAO have been showing great interest in Peace Operations for some time, probably due to the amount of resources involved. GAO has produced 33 reports on Peace Operations from 1990-2002.<sup>37</sup> GAO concludes that Peace Operations succeed if there is a clear peace agreement among international organizations and the affected parties to provide legitimacy and enough military power to provide security for civilian work to proceed.<sup>38</sup> The GAO report uses the examples of the Balkans and Somalia to compare and contrast successful operations:

For example, the NATO-led deployments in the Balkans since the mid-1990s had sufficient troops and equipment and clear authority to enforce the agreements. These operations quickly created secure conditions to allow civilian organizations to conduct elections, begin reconstruction, and initiate police training. In contrast, U.N.-led peacekeeping missions in Somalia and in Bosnia, in the early 1990s failed, in part, because they lacked sufficient troops and arms.<sup>39</sup>

The GAO report on Peace Operations over the last 12 years further concluded that inconsistent protection and coordination of aid delivery will allow the belligerents to use it as a weapon—as the Bosnian Serbs did from 1990-1995 and Aideed did in Somalia.<sup>40</sup> Finally, besides legitimacy and security, the GAO finds “civil administration was most successful when military and civilians worked together.”<sup>41</sup>

By most accounts, Peace Operations in Bosnia were a success due to legitimacy, adequate security forces, and semi-effective coordination with NGOs. According to a press release on activities brought before the Security Council in 2002, the United Nations Mission in Bosnia and Herzegovina (UNMIBH) came to a successful end after completing all of their mandates for that region.<sup>42</sup>

### Emerging Insights from Iraq and Afghanistan

The post-major combat operations phase in Iraq is a stunning example of how the failure to effectively plan and execute interagency operations turned what started out as a rapid victory into a long, hard slog.<sup>43</sup>

Christopher Schnaubelt, a political scientist and a Reserve Colonel who worked on the planning staff of the theater headquarters in Iraq, theorized that the shortfalls in the interagency process allowed the insurgency to blossom in Iraq. In his paper, he talked about friction between the military headquarters and the Coalition Provisional Authority (CPA), an OSD office run by an ambassador to provide unity of effort between security and reconstruction activities. Schnaubelt said that interagency disconnects such as coordination of contractor movement and sharing of intelligence were poor to nonexistent, causing incidents like the Fallujah crisis where civilian contractors were brutally abducted and murdered. He also used lack of security coordination for reconstruction projects “such as restoration of power, water, and sewer systems” as a reason why the insurgency is flourishing. His first-hand analysis of the situation in Iraq was commensurate with GAO’s findings—NGOs and contractors need adequate security before they can do their reconstruction and humanitarian work.

Jeffrey Record, a professor of strategy at the Air War College, in his article *Why the Strong Lose*, said that the insurgency in Iraq arose “in part because the Coalition forces did not seize full control of the country and impose the security necessary for Iraq’s peaceful and economic reconstruction.”<sup>44</sup> To further his point, he cited Frederick W. Kagan, a former West Point professor, who said that the U.S. military believed they can win wars by destroying targets. When, in fact, most circumstances, like Iraq, require:

large numbers of properly trained ground troops for the purposes of securing population centers and infrastructure, maintaining order, providing humanitarian relief, and facilitating revived delivery of such fundamental services as electrical power and potable water.<sup>45</sup>

Because of the lack of security in Iraq, most of the humanitarian community has departed or is operating from other countries. As of 29 November 2005, more than 225 civilian foreigners and thousands of Iraqis have been kidnapped, some beheaded or killed, since the invasion in 2003. “The victims included aid workers, journalists and contractors, seized in an attempt to drive foreigners out of the country or to win large ransoms.”<sup>46</sup> The UNHCR, the U.N.’s preeminent humanitarian NGO coordinator, explained that the security organs “are still unable to provide adequate physical protection for themselves, the Iraqi population or the humanitarian community.”<sup>47</sup> As a result, according to UNHCR, most of the international organizations have closed their operations completely or moved to Kuwait or Jordan.<sup>48</sup> These scholars and the

UNHCR point to adequate security as the overwhelming requirement to conduct humanitarian and reconstruction work.

Although reconstruction efforts in Afghanistan have been reasonably successful in 2005, the security situation hampered humanitarian and reconstruction efforts in 2004.<sup>49</sup> The U.S. Office of Foreign Disaster Assistance (OFDA), an office of USAID responsible for providing humanitarian assistance in response to international crises, claims insecurity hampered reconstruction and humanitarian delivery efforts [in Afghanistan]. In fact, “MSF [Doctors Without Borders] ceased countrywide operations in August 2004 amid an increasing number of ambushes on humanitarian workers that included the killing of five MSF staff members in June [2004].”<sup>50</sup>

Despite a rough start, Afghanistan is turning the corner and providing lessons that may be useful in Iraq. Provincial Reconstruction Teams—70-100 person interagency teams assigned to each of 18 provinces and to each Ministry of the central government—are a possible solution to organizing the reconstruction effort in Iraq. The teams are modeled after a relatively successful program in Afghanistan taking some of the nation building role off of military shoulders. By their design, they combine military security operations with humanitarian and reconstruction work. Humanitarian NGOs are criticizing this approach because, they say, it blurs the lines between “fighting and relief.”<sup>51</sup> In Afghanistan, however, the groups’ reconstruction and nation building effort conducted by the multi-agency and partnered with NGOs appears to be a success. The U.S. Institute of Peace, a nonpartisan group created by the U.S. Congress, issued a report praising the PRTs work in Afghanistan but doubted they could succeed in Iraq. The Institute predicted:

PRTs fare well in reasonably permissive environments, where even a small, lightly-armored military force can make a meaningful contribution to regional security. PRTs would not be appropriate for Iraq, with its large population centers and high-intensity combat operations.<sup>52</sup>

Lessons learned thus far in Iraq and Afghanistan with reference to civil-military relationships continue to confirm the need for security so NGOs and contractors can do their reconstruction and humanitarian work, the need for NGO neutrality, and the need for coordination to synchronize efforts.

#### Contractor Performance and Concerns

As noted earlier, the General Accounting Office studied the issues surrounding contractors in support of deployed forces. They found that in relatively stable environments “such as the Balkans, contractors provide base operations support and logistics support.”<sup>53</sup> The

U.S. military is so comfortable with utilizing contractors in the Balkans environment that they have hired 2 contractors for every military member present (as of October 2002).<sup>54</sup> Contractors in deployed theaters even perform functions once considered military-only tasks such as gate and perimeter security, intelligence analysis, and oversight over other contractors.<sup>55</sup> However, in the early stages of military involvement in less secure environments, like Afghanistan or Iraq, contractors principally provide support to weapon systems.<sup>56</sup> The Army relies on contractors for the maintenance of about 28% of its weapon systems.<sup>57</sup> Some weapon systems like the Predator, Global Hawk, F-117A stealth fighter, Guardrail aircraft, Patriot Missile System, and C17, are very contractor dependent.<sup>58</sup> Program managers deemed these systems either uneconomical or too complex for the services to maintain needed support capability. In cases such as these, the contractor employee must deploy to support the system or the user must do without. The military is increasingly using contractors to perform functions formerly performed by combatant soldiers, even in less permissive forward deployed locations.

One of the serious issues with contractors increasingly taking on the roles of the military in combat situations is that contractors are not military members and, thus, they are not combatants. Combatants enjoy special privileges under the Law of Armed Conflict (LOAC)—Hague law and Geneva law—which classifies persons involved in armed conflict as either combatants or noncombatants.<sup>59</sup> Article 4, Geneva Convention III, Treatment of Prisoners of War, 12 August 1949, defines combatants as persons with a commander, with a distinctive insignia or uniform, carrying arms openly, and conducting operations in accordance with the laws of war.<sup>60</sup> Thus, DOD contractors and NGOs are noncombatants because they do not fall under the Uniform Code of Military Justice (UCMJ), they do not have a commander, and they are not trained to conduct operations under the LOAC.<sup>61</sup> If captured, their noncombatant status grants prisoner of war privileges and protection in accordance with the Geneva and Hague conventions. Contractors risk losing their noncombatant status and privileges when they are involved in direct action, which includes “functioning as a guard, lookout, or intelligence agent for an armed force.”<sup>62</sup> Contracted security, intelligence analysts, and host nation troop trainers are common in the Balkans and Iraq.

The performance of contractors and NGOs in permissive environments like the Balkans and other more secure environments has been relatively successful. In the Balkans, contractors have taken over most all non-combat missions and the U.N. has completed all mandates in Bosnia. However, contractors and NGOs have a bleaker report card of performance in non-permissive theaters such as Iraq and Afghanistan. The news brings regular reports of contractors and NGOs being targeted by terrorists because they are soft targets.<sup>63</sup>

During the Persian Gulf War, some contractors working in Saudi Arabia left the country for fear of possible chemical weapons use. Some contractors refused to deploy with troops into the high intensity operations of the initial assault during Operation Iraqi Freedom. Commanders cannot force contractors to go into harm's way and must either replace the capability or live without it.

Optimally, the military would identify critical functions and plan for this non-performance contingency. They would acknowledge the possibility and probability that the contractor will not be there to perform critical functions, at least for some time. In spite of this shortfall, in June 2003 the GAO found that "DOD and the services have not identified those contractors that provide mission essential services and ...developed backup plans."<sup>64</sup> As early as 1988, the DOD Inspector General (IG) implicated the services saying they had "no capability to ensure continued contractor support for emergency-essential services during mobilization or hostilities."<sup>65</sup> DOD responded with DOD Instruction 3020.37, *Continuation of Essential DOD Contractor Services During Crises*, which required the commander to identify mission essential services and develop backup plans if the contractor becomes unable to perform those services.<sup>66</sup> In June 1991, the DOD IG performed a follow-up audit<sup>67</sup> and GAO conducted an audit on the same DOD Instruction in June 1993 with similar findings, that is, "DOD and the services have not identified those contractors that provide mission essential services and where appropriate developed backup plans."<sup>68</sup> The GAO's 2003 report culminates a long standing history of DOD non-compliance with their own instruction. DOD is fighting an internal struggle between over-dependence on contractors and the need to mitigate the risk.

In 1980, a think-tank published an article entitled *DOD Use of Civilian Technicians*. This study found:

Continued reliance on civilian technicians means that maintenance skills are not being successfully transferred from the producer to the ultimate user of the system. Should civilians leave their job in wartime or other periods of heightened tension, the material readiness of key systems would be jeopardized.<sup>69</sup>

In the spirit of compliance DOD Directive 1130.2, *Management and Control of Engineering and Technical Services* dated July 1990, required the military to achieve self-sufficiency in operating new systems as soon as possible but no later than 12 months, to curb reliance on contractors once deployed.<sup>70</sup> "Today, that directive is gone, and the general philosophy has completely reversed."<sup>71</sup> In this see-saw internal struggle, the Army is recognizing the risks of increased dependency on contractors and is taking steps to limit its liability. A June 2002 GAO report cites a memorandum from the Assistant Secretary of the Army for Acquisition, Logistics, and

Technology which requires Program Executive Officers and Program Managers to develop systems that do not require contractor support in forward deployed areas.<sup>72</sup>

The Joint Chiefs' *Focused Logistics Campaign Plan* acknowledged that the increased presence of contractors can result in unintended consequences. The document prescribed Joint Publication 4-0, Chapter V, "Contractors in the Theater" as a comprehensive plan to address these issues. The Defense Acquisition Desk book contains a template providing contract language and guidance to aid contracting officers when drafting contracts to ensure the right clauses are included. The Joint Operation Planning and Execution System accounts for contractor personnel in deployment data.<sup>73</sup> The Department of Defense Instruction *Contractor Personnel Authorized to Accompany the U.S. Armed Forces* requires the following actions of DOD components with respect to contractors accompanying the force (which includes subcontractors, third country nationals (TCNs), and host nation personnel under contract):<sup>74</sup>

- Develop contingency plans to ensure continuation of services if a defense contractor is unable to perform.
- Develop a security plan for the protection of contractor personnel.
- Contracts for security service will be used cautiously, and commanders will follow very strict control and procedures for arming contractors for self defense.
- The Combatant Commander is responsible for visibility and by name accountability of all contractors accompanying the force. DOD will develop a joint web-based database as the central repository for all contractors accompanying the force.
- Designate a deployment center which all contractors will process through before deployment to receive Geneva Convention identification cards, government furnished equipment (such as protective equipment), medical and dental screening, and validate required training. Designate a joint reception center to process all contractors in and out of theater.
- All contractors must provide dental records and a DNA sample to DOD.
- Acquisition program managers shall coordinate with Combatant Commanders on any proposed contractor life-cycle support arrangements.

This instruction is very comprehensive and onerous for DOD components, especially Combatant Commanders who must develop continuity plans; develop processing centers and tracking databases; validate training, medical records; provide protection and equipment for contractors, and account for contractors and provide complete visibility. The DOD Instruction requires all components to update their Service doctrine, Joint doctrine, and operations plans and orders to implement this policy. As mentioned above, the policy only applies to DOD



components and not to other U.S. or international agencies. Thus, the Department of State could hire contractors for security or otherwise that would not necessarily have to comply with this DOD policy. Nevertheless, the DOD has taken great strides to address the issues arising from the extensive use of contractors in the full-spectrum theater of operations.

#### Conclusions and Recommendations

The nation accepts the role of NGOs in implementing strategy as articulated in all strategy documents and military doctrine. The DOD is robustly planning for the increasing use of commercial contractors to fill capability shortfalls and improve efficiency under best business practices. In spite of all this, recent history shows that civilians on the battlefield do not always perform as desired, especially in non-permissive hostile environments. Some implications of working with civilians in these environments and possible solutions to mitigate shortfalls are provided.

NGOs are the experts at conducting humanitarian and reconstruction tasks, but they are independent operators, and they require a modicum of security. Although they covet neutrality for their own protection, their need for security, funds and information outweighs their desire for neutrality. Nevertheless, the military should coordinate and work discretely with NGOs to respect their neutrality when possible. Furthermore, the military should coordinate with NGOs through the U.N. and U.S. Department of State when available, UNHCR or USAID, respectively. A recent USJFCOM experiment, Multinational Experiment Four, sets an excellent precedent for the DOD's work with multinational and interagency partners. The February 2006 experiment involves USJFCOM and the State Department, among others, collaborating with NGOs to work through issues and future working relationships.<sup>75</sup> Without adequate relationships with NGOs which address security, belligerents will use NGOs and civilians as weapons to gain a tactical, operational, or strategic advantage.

As with NGOs, commercial contractors are less effective in non-permissive environments. In fact, because of security and accountability requirements associated with contractors accompanying the force, contractors can be an Achilles heel in non-permissive environments. Since the DOD relies heavily on contractors in deployed theaters, they should identify mission essential contractors and plan for their non-availability in accordance with the longstanding DOD Instruction 3020.37 in the event they are killed or refuse to deploy or remain in harm's way. The DOD should at least plan to do without contractors for 45 to 90 days after entering a non-permissive environment. Acquisition program managers should not rely on contractor support for their material systems used in a non-permissive environment. Furthermore, the National

Security Council must make a concerted effort to publish U.S. interagency policy on the combatant-like use of contractors since contractors who wear a uniform, repair a weapon, gather intelligence, pull security duty, and carry weapons create the appearance of being a combatant. The DOD, which has recently addressed contractors accompanying the force in DODI 3020.41, must re-look its practices which put non-combatants in combatant-like roles making them susceptible to belligerent prosecution. Otherwise, the nation and DOD are placing citizens and employees at risk of prosecution as unlawful combatants in belligerent or international courts.

Contractors and NGOs represent incredible capability for addressing national interests globally. However, the prudent strategist will understand their probable behaviors in all types of environments and account for their uncertainty. A person who is a combat-multiplier in one environment can be a burden in another.

#### Endnotes

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